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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,419	03/26/2001	Yong-Cheng Shi	1908	8490

7590 03/25/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/25/2003 //

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/817,419

Applicant(s)

Shi et al

Examiner

Lien Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 11, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-41 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. Claims 1,2,4,5,8,10,11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitney et al for the same reason set forth in paragraph 3 no. 3 and for the additional reason set forth below.

The amendment to claim 1 does not define over Whitney the birefringence characteristic claimed is inherent in the Whitney et al product because they disclose the grains are substantially fully cooked, not completely fully cooked.

2. Claims 3, 6-7, 9 and 16-~~41~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitney et al in view of Fergason et al for the same reason set forth in paragraph 6 in paper no. 3.

3. In the response filed March 11, 2003, applicant submitted a declaration to show the difference between the product obtained by the Whitney et al process and the product obtained by the claimed process. The declaration is not found to be persuasive. The declaration states the Whitney et al product is substantially fully cooked and no longer birefringent under polarized light. The showing in the micrographs is inconclusive; there is no explanation as to how the micrographs are interpreted. There is no microscopic showing of the heat-treated grains in accordance with the claimed process. The cooking condition with respect to the moisture content, temperature and time disclosed in Whitney et al falls within the range claimed and the limitation of "not completely destroyed" does not exclude substantially fully cooked. Not completely destroyed can be almost completely destroyed; the starch can have its granular structure and birefringence 99.9...% destroyed and still meets the claimed limitation.

Furthermore, the declaration only shows 1 moisture content, 1 temperature and 1 time within the

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broad range claimed. Will the same result be obtained if the grain is treated for 24 hours at 130 degree C. The declaration states the cooked wheat of Whitney is already gelatinized and thus no endothermic event is observed from the DSC data. The Whitney product does not have to be fully cooked; it can be substantially fully cooked which means the starch is not completely gelatinized. Furthermore, as stated above, the time, temperature and moisture condition of the Whitney et al fall within the claimed parameters.

4. In the response filed March 11, 2003, applicant argues to determine the meaning of cooked or gelatinization, one skilled in the art would look at the entire disclosure of Whitney and the teaching of Whitney indicates that if the starch is not fully gelatinized, the grain will not shred properly. This argument is not persuasive because if the entire teaching of Whitney is considered, then it is clear that Whitney teaches the grains can be substantially fully cooked and not totally cooked. This is found on column 3 lines 1-3 and also in the claims. The examiner does not disagree with applicant that the starch is gelatinized in the Whitney product; however, the starch does not have to be totally gelatinized as argued by applicant. The starch can be 99.9...% gelatinized and still meets the claimed limitation; not completely destroyed can be almost completely destroyed. Applicant argues the claimed language must be read in conjunction with the specification. Only the limitation in the claim is considered in applying prior art; in any event, even if the claimed language is read in conjunction with the specification, the same interpretation still applies because the same language is used in the specification. Applicant argues the specification clearly indicates the degree of gelatinization and that is the starch is not fully

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gelatinized. The starch is not fully gelatinized but it can be substantially fully gelatinized which is what Whitney teaches. Furthermore, the cooking condition with respect to moisture content, time and temperature disclosed in Whitney falls within the range claimed so the same end result must be obtained.

5. Applicant's arguments filed March 11, 2003 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

March 21, 2003


LIEN TRAN
PRIMARY EXAMINER
C/Group 1700